

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

**MWK RECRUITING INC.,**

Plaintiff,

v.

**EVAN P. JOWERS,**

Defendant.

**Case No. 1:18-cv-00444-RP**

**EVAN P. JOWERS**

Counterclaimant,

v.

**MWK RECRUITING, INC., ROBERT  
E. KINNEY, KINNEY RECRUITING  
LLC, and KINNEY RECRUITING  
LIMITED**

Counterdefendants.

**MWK'S<sup>1</sup> RESPONSE TO NOTICE OF EVAN P. JOWERS'S OBJECTIONS TO  
MWK'S AMENDED IDENTIFICATION OF TRIAL EXHIBITS**

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<sup>1</sup> MWK refers to the Plaintiff MWK Recruiting, Inc., its successor in interest, Counsel Holdings, Inc., and all Counterdefendants.

## I. INTRODUCTION

MWK files this response to Defendant and Counterclaimant Evan P. Jowers's ("Jowers") objections to MWK's Amended Identification of Trial Exhibits. For the reasons that follow, Jowers's objections to Exhibits P-1 through P-135—excluding Jowers's objections under FRE 402 and FRE 403 to Exhibit P-88—must be deemed waived pursuant to Local Rule CV-16(g).

## II. ARGUMENT

Pursuant to Local Rule CV-16(f)(4) and the Court's October 15, 2021 Order (Dkt. 301), MWK submitted its Identification of Trial Exhibits on October 20, 2021. Dkt. No. 302-2. In its filing, MWK identified Exhibits P-1 to P-120. *Id.* On the same day, MWK submitted its Initial Deposition Designations pursuant to Local Rule CV-16(f)(6). Dkt. No. 302-4. MWK designated testimony of depositions by written questions to fourteen law firms regarding candidate placements made by Jowers, as well as the testimony of Ms. Alexis Lamb. *Id.* at 3–5.

After learning that the Court would allow designated deposition testimony to be admitted as trial exhibits, MWK filed an Amended Identification of Trial Exhibits. Dkt. 317.<sup>2</sup> MWK's amended list included the previously designated depositions as Exhibits P-121 to P-135. *Id.* at 8–9.

On December 2, 2021, Jowers filed his objections to MWK's Amended Identification of Trial Exhibits. Dkt. 323. Jowers specifically raises objections to

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<sup>2</sup> Counsel for MWK notified Jowers's counsel via email on November 26, 2021 that it would be moving designated deposition testimony into evidence as exhibits per the Court's instructions.

Exhibits P-11, P-12, P-15, P-46 through P-50, P-59 through P-61, P-73, P-74, P-87, P-88, P-92 through P-96, P-98 through P-145, and P-152 through P-160. This is the first instance in which Jowers has objected to any of Exhibits P-1 through P-120 or MWK's designated deposition testimony, P-121 through P-135. Jowers does not object to any of these particular exhibits under FRE 402 or FRE 403 except for Exhibit P-88. Dkt. 323 at 5.

Pursuant to Local Rule CV-16(g), Jowers was required to serve and file lists disclosing any objections to the use of MWK's designated deposition testimony and any objections to MWK's exhibits by October 27, 2021. Excluding his FRE 402 and FRE 403 objections to Exhibit P-88, Jowers failed to timely serve and file his objections to both Exhibits P-1 through P-120 and MWK's designated deposition testimony, Exhibits P-121 through P-135. Further, Jowers has not shown—and cannot show—good cause for the Court to excuse his thirty-seven-day delay in serving and filing his objections. Under Rule CV-16(g), Jowers's objections to Exhibits P-1 through P-135 must be deemed waived.

Dated: December 3, 2021

Respectfully submitted,

A handwritten signature in black ink that reads "R. W. Mort III". The signature is fluid and cursive, with the "III" written as a small, stylized mark at the end.

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